IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.4347 OF 2004
IN
CRIMINAL APPEAL NO. OF

Yeshwant Sahakari Taluka Kharedi Vikri Sangh Ltd., Panhala ...Applicant.
V/s.
Narahari Gopinath Bagade ...Respondent.

Shri G.N.Salunke, adv. for the Applicant.
Shri Y.S.Shinde, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 4th April, 2007.

P.C.:

1. Notice was issued to the respondent no.2 clearly indicating that this application seeking leave to prefer appeal against the acquittal and the appeal may be heard finally at the stage of admission itself. However, none is present for the respondent no.2. Heard Mr.Salunke, the learned counsel for the applicant. Perused the record. Leave granted.

2. Appeal admitted. It be registered.

3. Record reveals that the present applicant had filed complaint under Section 138 of the Negotiable Instruments Act against the respondent on the ground that the respondent had issued cheque of Rs.1 lakh in favour of the applicant, which is a co-operative society

in discharge of liability. On presentation cheque was dishonoured for want of 'Sufficient Funds'. Notice was issued to the respondent no.2. In spite of that he failed to make the payment. Therefore, complaint was filed in March, 2002. Plea of the accused was recorded on 27-6-2003 and he pleaded not guilty. It appears that thereafter on some occasions both the parties were present and on some occasion one or the other party was absent. On 7-1-2004 and 4-2-2004 both the parties were present but because the Court was busy in hearing other cases, this case could not be taken up. On 3-3-2004 the complainant was absent while the accused was present. However, the roznama reveals that the Court was busy in writing judgment in 3 other criminal cases, therefore, this matter was adjourned. On 2-4-2004 the complainant and its representative was absent. Accused was present and the learned Magistrate dismissed the complaint in default and acquitted the accused for want of prosecution, apparantly under Section 256 of the Cr.P.C. On the same day at 2.00 p.m., application was made by the advocate for the complainant stating that due to the end of the financial year, the manager of the complainant was busy in recovery matters and advocate himself, who used to come from Kolhapur, could not reach within time due to traffic problems. By the time he came to the Court, the complaint was already dismissed

in default . This application for restoration was also dismissed on the ground that there is no such provision for restoration.

4. Taking into consideration the record, I am satisfied that on earlier occasions even though the complainant was absent, the matter could not have been taken up because the Court was busy in writing judgments On 2-4-2004 it appears that the matter was called out at the beginning of the day and as nobody on behalf of the complainant appeared, the matter came to be dismissed. The genuine reasons are given by the complainant for remaining absent. In my opinion, taking into consideration the circumstances, it will be in the interest of justice to allow the appeal and to restore the matter to the file of the trial Court.

5. In the result, appeal is allowed. Impugned order of dismissal of the complaint and acquittal of the accused is hereby set aside. Criminal Case No. 215 of 2002 is hereby restored to the file of J.M.F.C.Panhala. On receipt of the record, the learned Magistrate shall issue notice to the respondents.

6. Appeal stands disposed off accordingly.

(J.H.Bhatia,J.)